



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 38 CFR Part 1

### RIN 2900-AR19

### Social Security Number Fraud Prevention Act of 2017 Implementation

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule

**SUMMARY:** The Department of Veterans Affairs is amending its regulations implementing the Privacy Act. These revisions clarify and update the language of procedural requirements pertaining to the inclusion of Social Security account numbers (SSN) on documents that the Department sends by mail. These revisions are also required by the Social Security Number Fraud Prevention Act of 2017, which restricts the inclusion of SSNs on documents sent by mail by the Federal Government.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Amy L. Rose, Program Analyst, VA Privacy Service, 005R1A, 811 Vermont Ave., NW Washington, DC 20420, (202) 237-5070. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On October 6, 2021, VA published a proposed rule in the Federal Register (86 FR 55547) that would establish VA's statutory authority to implement the Social Security Number Fraud Prevention Act of 2017 (the Act) (Pub L.115-59; 42 U.S.C. 405 note). The public comment period ended on December 6, 2021, and VA received two comments in response to the proposed rule.

One comment supported the proposed rule but inquired if there would be any overlap between the proposed rule and the VA mail management policy (VA Directive and Handbook 6340). VA Directive 6340 broadly states that "VA mail facilities must

ensure all mail is handled appropriately to conform to the Freedom of Information Act (FOIA) and/or the Privacy Act.” However, neither the Directive nor VA Handbook 6540 specifically address Pub L. 115-59, which is the statutory authority for promulgating the proposed rule. There is no statutory overlap between VA mail management policy and the proposed rule at present (although VA may eventually update VA Directive and Handbook 6340 to reflect the final rule). For this reason, VA will make no changes to the rulemaking based on this comment.

One comment suggested that there should be an “opt in” option for “older Veterans who rely on paperwork from the VA that has their SSN on it for different matters” so that older Veterans could continue to receive mail with their SSN on it. The proposed rule includes the addition of sections to 38 CFR 1.575 that would enable VA to truncate SSNs for outgoing mail where it is not possible to eliminate the SSN (such as in the case of older Veterans whose case number contains their SSNs). This provision would address the concerns of providing smooth, continuous service better than placing the burden on older Veterans to specifically “opt in” to continue to receive mail with their SSN on it. For this reason, VA will make no changes to the rulemaking based on this comment.

Accordingly, the proposed rule is adopted as a final rule without change.

#### *Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and

Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### *Regulatory Flexibility Act*

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). The factual basis for this certification is that the regulation only governs the circumstances under which the Department includes SSNs in mail issued by the Department. The behavior of small entities is not addressed in the regulation and is therefore not impacted. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### *Paperwork Reduction Act*

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### *Assistance Listing*

There are no Assistance Listing numbers and titles for this rule.

#### **List of Subjects in 38 CFR Part 1**

Disability benefits, Pensions, Veterans

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 25, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts

Regulation Development Coordinator

Office of Regulation Policy & Management

Office of General Counsel

Department of Veterans Affairs

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR 1.575, as set forth below:

## CHAPTER 1 – DEPARTMENT OF VETERANS AFFAIRS

### PART 1 – GENERAL PROVISIONS

#### § 1.575 – Social Security Numbers in Veterans' Benefits Matters

1. The authority citation for part 1 is revised to read as follows:

Authority: 38 U.S.C. 5101, and as noted in specific sections.

2. Amend §1.575 by adding paragraph (d) to read as follows:

#### **§ 1.575 Social security numbers in veterans' benefits matters.**

\* \* \* \* \*

(d) A document the Department sends by mail may not include the social security number of an individual except as provided below:

(1) The social security number must be truncated to no more than the last four digits; or

(2) If truncation of the social security number is not feasible:

(i) The Senior Agency Official for Privacy, the Chief Privacy Officer, and the Social Security Number Advisory Board (SSNAB) must jointly determine that inclusion of the social security number on the document is necessary as required by law; to comply with another legal mandate; to identify a specific individual where no adequate substitute is available; or to fulfill a compelling Department business need;

(ii) The document that includes the complete social security number of an individual must be listed on the Complete Social Security Number Mailed Documents Listing on a publicly available website; and

(iii) No portion of the social security number may be visible on the outside of any mailing.

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